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Attorney Docket No. RSW920030193US1 (7161-148U) **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	Customer Number: 46320
Kwasi ASARE, et al.	:	Confirmation Number: 2577
Application No.: 10/726,192	:	Group Art Unit: 2192
Filed: December 2, 2003	:	Examiner: T. Dao

For: HOSTING ENVIRONMENT ABSTRACTION AGENTS

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed December 12, 2007, wherein Appellants appeal from the Examiner's rejection of claims 1-2, 4-7, 11-12, and 14-17.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on May 6, 2004, at Reel 014606, Frame 0715.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1-2, 4-7, 11-12, and 14-17 are pending and three-times rejected in this Application. Claims 3, 8-10, and 13 have been cancelled. It is from the multiple rejections of claims 1-2, 4-7, 11-12, and 14-17 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Third and Final Office Action dated September 12, 2007 (hereinafter the Second Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figure 3 and to independent claim 1, a hosting environment abstraction method is disclosed. In block 310, each of a set of components in an application are enumerated (lines 6-7 of paragraph [0025] of Appellants' disclosure). In block 320, dependencies between each component in the set are identified (lines 7-8 of paragraph [0025]). In block 330, a generic representation of the set of components are organized into a hierarchical structure based upon the identified dependencies (lines 1-3 of paragraph [0026]). In block 340, a model encapsulating the hierarchical structure is produced, and the model is stored in a repository for subsequent retrieval (lines 3-4 of paragraph [0026]). The identifying step comprises the step of inspecting each component in the set for data and method member references to other ones of the components in the set with the references indicating a dependency (lines 8-10 of paragraph [0025]). Also, the components are application components, and the application comprises the set of components (lines 1-4 of paragraph [0023]).

Referring to Figure 3 and to independent claim 11, a hosting environment abstraction method is disclosed. In block 310, each of a set of components in an application are enumerated

(lines 6-7 of paragraph [0025] of Appellants' disclosure). In block 320, dependencies between each component in the set are identified (lines 7-8 of paragraph [0025]). In block 330, a generic representation of the set of components are organized into a hierarchical structure based upon the identified dependencies (lines 1-3 of paragraph [0026]). In block 340, a model encapsulating the hierarchical structure is produced, and the model is stored in a repository for subsequent retrieval (lines 3-4 of paragraph [0026]). The identifying step comprises the step of inspecting each component in the set for data and method member references to other ones of the components in the set with the references indicating a dependency (lines 8-10 of paragraph [0025]). Also, the components are application components, and the application comprises the set of components (lines 1-4 of paragraph [0023]).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-2, 4-7, 11-12, and 14-17 were rejected under 35 U.S.C. § 102 for anticipation based upon Ben-Romdhane et al., U.S. Patent Publication No. 2004/0031015 (hereinafter Ben-Romdhane);

VII. ARGUMENT

THE REJECTION OF CLAIMS 1-2, 4-7, 11-12, AND 14-17 UNDER 35 U.S.C. § 102 FOR ANTICIPATION BASED UPON BEN-ROMDHANE

For convenience of the Honorable Board in addressing the rejections, claim 11 stands or falls together with independent claim 1; claim 12 stands or falls together with claim 2; claim 14 stands or falls together with claim 4; claim 15 stands or falls together with claim 5; claim 16 stands or falls together with claim 6; and claim 17 stands or falls together with claim 7.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.[1] Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.[2] As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.[3] This burden has not been met.

[1] In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).
[2] See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).
[3] Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

Claim 1

Claim 1, in part, recites "enumerating each of a set of components in an application" and "identifying dependencies between each component in said set." To teach these limitations, the Examiner cited the following on page 3 of the Third Office Action "FIG. 4, Source Code 1, [0071-0074]; Language Dependent Format LDF 54, [0065]; [0127-0128]." Although not explicitly stated in the Examiner's analysis, Appellants proceed under the assumption that the Examiner is asserting that the "source code files 1" respectively allegedly correspond to the components in the set of components, as claimed.

At the outset, Appellants are not clear as to why the Examiner cited "Language Dependent Format LDF 54." As described in paragraph [0065], a LDF file appears to be a parsed source code file, the relevancy of which to the claimed invention has not been clearly identified by the Examiner.

Regarding the claimed "identifying dependencies between each component in said set," upon reviewing the passages cited by the Examiner, Appellants are unclear where this limitation is identically disclosed by Ben-Romdhane. Paragraph [0127] states that "a component's dependency list contains each foreign component that contains a function that is called from within the component." However, Ben-Romdhane does not clarify what, exactly, constitutes the "foreign component." As claimed, an application comprises the set of components. However, Ben-Romdhane does not explicitly teach that the "foreign component" is within the same application as the component having the dependency list. Moreover, Ben-Romdhane is silent as to whether or not dependencies are identified between each component is the set, as claimed.

Paragraph [0128] refers to "dependency relationships between each of the functions that are contained within a single component." However, as claimed, the dependencies are between application components and not between functions in a single component, as taught by Ben-Romdhane.

Claim 1, in part, further recites "organizing a generic representation of said set of components into a hierarchical structure based upon said identified dependencies." To teach these limitations, the Examiner cited the following on page 3 of the Third Office Action "FIG. 5A, -0089-0091]; FIG. 9C, [0140-0143]." As noted by Ben-Romdhane in paragraph [0089], "FIG. 5A is a block diagram illustrating the conversion of native source code files 92A-D into intermediate format files LDF 94A-D by parser 52," which has no readily apparent relevance to the claimed generic representation of the set of components in a hierarchical structure. Although Fig. 5A illustrates elements (i.e., 92A-D) that the Examiner alleges as corresponding to the claimed components, neither this figure nor the associated passages (i.e., paragraphs [0089]-[0091]) refer to dependencies between the components.

Moreover, referring specifically to paragraph [0140] and generally to paragraphs [0141]-[0143], "FIG. 9C is a software application window illustrating an example calling tree viewer 124" and "[s]earch results viewer 125 preferably displays the results of any search conducted by the information model search engine." Again, how Fig. 9C of Ben-Romdhane is relevant to the claimed generic representation of the set of components in a hierarchical structure is unclear to

Appellants. Also, paragraphs [0140]-[0143] are silent as to "a generic representation of said set of components, "as claimed. Thus, the Examiner's cited figures and passages fails to establish that Ben-Romdhane identically disclose the limitations at issue within the meaning of 35 U.S.C. § 102.

Claim 1, in part, further recites "producing a model encapsulating said hierarchical structure." To teach these limitations, the Examiner cited the following on page 3 of the Third Office Action "FIG. 4, Language Independent Format LIF 62, [0091-0093]; FIG. 6A, [0100-0102]; [0097], [0240-0244], and [0295]." Appellants are unclear as to precisely what teachings the Examiner has relied upon to allegedly identically disclose the claimed model and how the model encapsulates the hierarchical structure.

Claim 1, in part, further recites "said identifying step comprises the step of inspecting each component in said set for data and method member references to other ones of said components in said set, said references indicating a dependency." To teach these limitations, the Examiner cited the following on page 4 of the Third Office Action "[0079-0082]; [0131-0137]." Upon reviewing these two sets of cited passages, Appellants are unclear as to what features in Ben-Romdhane identically disclose the claimed "data and method member references to other ones of said components in said set." Neither of the passages refers to data and method member references. Thus, the Examiner's cited passages fails to establish that Ben-Romdhane identically discloses the limitations at issue in claim 1 within the meaning of 35 U.S.C. § 102.

Claim 2

Claim 2, in part, further recites "further identifying dependencies between target platform resources and said components in said set; and, recording said further identified dependencies in said model." To teach these limitations, the Examiner cited the following on page 4 of the Third Office Action "[0060-0063]." Upon reviewing these passages, Appellants are unable to determine exactly what features correspond to the claimed "target platform dependencies" and the dependencies between the target platform dependencies and the components in the set. The Examiner's cited passages do not refer to the source code (i.e., the alleged application components); as such, Appellants are unclear as to how these passages teach "identifying dependencies between target platform resources and said components in said set," as claimed. Thus, the Examiner's cited passages fails to establish that Ben-Romdhane identically discloses the limitations at issue in claim 2 within the meaning of 35 U.S.C. § 102.

Claim 4

Claim 4, in part, further recites "said further identifying step comprises the step of inspecting each component in said set for data and method member references to said target platform resources." To teach these limitations, the Examiner cited the following on page 4 of the Third Office Action "FIG. 8A, [0111-0113]." The Examiner's cited figure and passages refers to templates 98A-I. However, the Examiner has failed to set forth a claim construction for the claimed term of "target platform resources" that would lead to the conclusion that one having ordinary skill in the art would recognize that the templates 98A-I correspond to the claimed "target platform resources." Moreover, Appellants note that claim 4 further describes the

limitations recited in claim 2 yet the Examiner's citations of Fig. 8A and paragraphs [0111]-[0113] do not have any readily discernable connection to the Examiner's citation of paragraphs [0060]-[0063]. Thus, the Examiner's cited passages fails to establish that Ben-Romdhane identically discloses the limitations at issue in claim 4 within the meaning of 35 U.S.C. § 102.

Claim 5

Claim 5, in part, further recites "said producing step comprises the step of writing said hierarchical structure to a markup language document wherein tags in said markup language document demarcate individual ones of said components and said identified dependencies." To teach these limitations, the Examiner cited the following on page 4 of the Third Office Action "[0240-0244] and [0295]." The Examiner's cited passages refers to separate LIF objects, which respectively correspond to the separate source code files (i.e., the alleged application components) (see lines 1-3 of paragraph [0242] and lines 1-3 of paragraph [0244] of Ben-Romdhane). However, as claimed, the individual ones of the components are demarcated in a markup language document by tags. On the contrary, individual ones of the allegedly components of Ben-Romdhane are not demarcated by tags, but instead though the use of separate LIF objects. Thus, the Examiner's cited passages fails to establish that Ben-Romdhane identically discloses the limitations at issue in claim 5 within the meaning of 35 U.S.C. § 102.

Claim 6

Claim 6, in part, further recites "the step of performing enumerating, identifying, organizing, producing and storing step subsequent to installing said application in a target platform." To teach these limitations, the Examiner cited the following on page 4 of the Third

Office Action "FIG. 2, [0059-0062]." Upon reviewing these passages, Appellants are entirely unclear where Ben-Romdhane teaches that these steps are performed subsequent to installing the application in a target platform. In this regard, Appellants are also unclear as to what teachings within Ben-Romdhane the Examiner is relying upon for the both the claimed "installing" and the claimed "target platform." Thus, the Examiner's cited passages fails to establish that Ben-Romdhane identically discloses the limitations at issue in claim 6 within the meaning of 35 U.S.C. § 102.

Claim 7

Claim 7, in part, further recites the "step of retrieving said model from said repository prior to installing a new component for use in said application." To teach these limitations, the Examiner cited the following on page 5 of the Third Office Action "FIG. 8, [0110]." Upon reviewing this figure and the cited passages, Appellants are entirely unclear where Ben-Romdhane teaches retrieving the model prior to installing a new component. Thus, the Examiner's cited passages fails to establish that Ben-Romdhane identically discloses the limitations at issue in claim 7 within the meaning of 35 U.S.C. § 102.

Conclusion

Based upon the foregoing, Appellants respectfully submit that the Examiner's rejection under 35 U.S.C. § 102 based upon the applied prior art is not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 102.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: December 12, 2007

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A hosting environment abstraction method comprising the steps of:

enumerating each of a set of components in an application;

identifying dependencies between each component in said set;

organizing a generic representation of said set of components into a hierarchical structure based upon said identified dependencies;

producing a model encapsulating said hierarchical structure; and,

storing said model in a repository for subsequent retrieval, wherein

said identifying step comprises the step of inspecting each component in said set for data and method member references to other ones of said components in said set, said references indicating a dependency, and

the components are application components, and the application comprises the set of components.

2. The method of claim 1, further comprising the steps of:

further identifying dependencies between target platform resources and said components in said set; and,

recording said further identified dependencies in said model.

4. The method of claim 2, wherein said further identifying step comprises the step of inspecting each component in said set for data and method member references to said target platform resources.

5. The method of claim 1, wherein said producing step comprises the step of writing said hierarchical structure to a markup language document wherein tags in said markup language document demarcate individual ones of said components and said identified dependencies.

6. The method of claim 1, further comprising the step of performing enumerating, identifying, organizing, producing and storing step subsequent to installing said application in a target platform.

7. The method of claim 1, further comprising the step of retrieving said model from said repository prior to installing a new component for use in said application.

11. A machine readable storage having stored thereon a computer program for hosting environment abstraction, the computer program comprising a routine set of instructions which when executed by the machine cause the machine to perform the steps of:

enumerating each of a set of components in an application;

identifying dependencies between each component in said set;

organizing a generic representation of said set of components into a hierarchical structure based upon said identified dependencies;

producing a model encapsulating said hierarchical structure; and,

storing said model in a repository for subsequent retrieval, wherein

said identifying step comprises the step of inspecting each component in said set for data and method member references to other ones of said components in said set., said references indicating a dependency, and

the components are application components, and the application comprises the set of components.

12. The machine readable storage of claim 11, further comprising the steps of:

further identifying dependencies between target platform resources and said components in said set; and,

recording said further identified dependencies in said model.

14. The machine readable storage of claim 12, wherein said further identifying step comprises the step of inspecting each component in said set for data and method member references to said target platform resources.

15. The machine readable storage of claim 11, wherein said producing step comprises the step of writing said hierarchical structure to a markup language document wherein tags in said markup language document demarcate individual ones of said components and said identified dependencies.

16. The machine readable storage of claim 11, further comprising the step of performing enumerating, identifying, organizing, producing and storing step subsequent to installing said application in a target platform.

17. The machine readable storage of claim 11, further comprising the step of retrieving said model from said repository prior to installing a new component for use in said application.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.